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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------|
| 10/799,920  | 03/12/2004  | Floyd William Brady  | 011345-006000US              | 6843             |
| 20350   | 7590        | 09/19/2005           |                              |                  |
| TOWNSEND AND TOWNSEND AND CREW, LLP<br>TWO EMBARCADERO CENTER<br>EIGHTH FLOOR<br>SAN FRANCISCO, CA 94111-3834 |             |                      | EXAMINER<br>BENNETT, ZAHRA I |                  |
|   |             |                      | ART UNIT                     | PAPER NUMBER     |
|   |             |                      | 2875                         |                  |

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/799,920

Applicant(s)

BRADY, FLOYD WILLIAM

Examiner

Zahra Bennett

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

The use of the trademark LEXAN has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Only the generic terminology must be used in the claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-10, 13-17 rejected under 35 U.S.C. 102(b) as being anticipated by Chen (US Patent 6,464,368). Chen teaches a night light (Figure 5) comprising: a base (11) including two leads for coupling to the wall outlet; a light bulb (Figure 4: 111) coupled to the base; and a container (13) including liquid (10) and glitter (101) therein coupled to the base. Chen further teaches a night light comprising: wherein the container comprises a body (13) and a bottom (121); wherein the container is located above the light bulb (Figure 5); wherein the container is coupled to the base with an extension piece (122); wherein the extension piece is coupled to the base with a collar

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(attached to 11); wherein the container comprises a single piece (13). Chen also teaches a night light comprising: a base (11) including two leads for coupling to the wall outlet; a light bulb (Figure 4: 111) coupled to the base; a collar (attached to 11) coupled to the base; an extension (122) coupled to the collar and substantially surrounding the light bulb (Figure 5); and a container (13) including liquid (10) and glitter (101) therein coupled to the base. In addition, Chen discloses the "container comprises a single piece (13) with an open top and separate cap (the tear drop shaped portion, see Figure 4 and Col 2, lines 18-22)." Regarding claim 17, the method steps are met by the operation of Chen as applied to claim 1 above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,3, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen as applied to claim 1 above, and further in view of Zale (US Patent 6,604,835). Chen does not disclose the container comprising of plastic that is temperature resistant. In a similar device, Zale teaches the container comprising of plastic that is temperature resistant (Column 3, lines 35-38). It would have been obvious to one of ordinary skill at the time of the invention to make the container from temperature resistant plastic, including LEXAN. One would be motivated to of modify

Zale's container in this manner for the benefit of increased safety as plastic is break resistant.

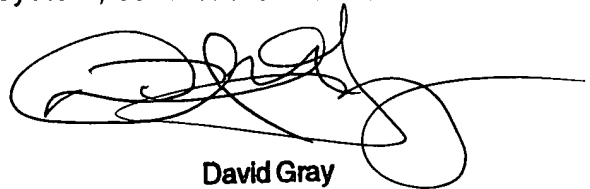
### ***Conclusion***

Chen teaches "bubbles" within the container that is coupled to the base, not glitter. However, Ford et al (US Patent Publication 2002/0172005) teaches "bubbles" and "glitter" are the same ([0006] lines 10-14).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zahra Bennett whose telephone number is 571-272-2267. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Renee Luebke can be reached on 571-272-2009. The fax phone number for the organization where this application or proceeding is assigned is 571-273-2267.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**David Gray**  
Primary Examiner